

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO <i>ex rel.</i> )		
STATE ENGINEER, <i>et al.</i> )	69cv 07896 JEC (ACE)	
	)	Rio Pueblo de Taos Adjudication
Plaintiffs, )		
v. )	No. 69cv 07939 (JEC)	
	)	Rio Hondo Adjudication
EDUARDO ABEYTA, <i>et al.</i> , )	(Consolidated)	
and CELSO ARELLANO, <i>et al.</i> , )		
	)	Rio Pueblo de Taos Section
Defendants. )		Randall Reservoir & Randall
	)	Reservoir Ditch
	)	Subfile No. 20.12
	)	

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CONSENT ORDER AMENDING AUGUST 10, 1973, ORDER  
ADJUDICATING THE "STORAGE FOR IRRIGATION" RIGHT  
ASSOCIATED WITH RANDALL RESERVOIR

THIS CONSENT ORDER sets out the agreement between the State of New Mexico *ex rel.* State Engineer ("State") and

RANDALL RESERVOIR ACEQUIA ASSOCIATION

("Defendant") concerning the Defendant's right to store water in the Randall Reservoir for the purpose of irrigation. Having reviewed the agreement set forth herein and being otherwise fully advised in the premises, the Court FINDS:

1. The Court has jurisdiction over the State, the Defendant, and the subject matter of this suit.
2. State Engineer License No. 215 ("License 215"), issued to Benjamin G. Randall ("Randall") on November 23, 1910, included the right to divert 528 acre feet per annum of surplus water from the Rio Fernando de Taos to a reservoir ("Randall

Reservoir”) with a storage capacity not to exceed 35 acre feet for the irrigation of 189.3 acres, with a priority of November 23, 1908.

3. On August 10, 1973, the Court entered Order (No. 418.58) (“Subfile Order”) for Rio Pueblo de Taos (“Pueblo”) Subfiles 20.12 and 20.35 in the name of John P. Brandenburg and R. Howard Brandenburg (the “Brandenburgs”). The Randall Reservoir is located on Tract 12, Map 20 of the Pueblo hydrographic survey. To the extent that the Subfile Order purported to confirm the water right granted pursuant to License 215, it is incomplete and contains many errors.

4. To wit, the Subfile Order does not state the elements of the surface water right granted under License 215. The Subfile Order also incorrectly identifies the Brandenburgs as owners of this right. A July 24, 1975, Final Judgment and Decree filed in Cause No. 9194, Taos County District Court, held that the Randall Reservoir is “the property of all of the individuals who own water rights in the Randall Reservoir,” and quieted the title of Spencer S. Sanders and the Brandenburgs in Tract 20.12 subject to the “Reservoir rights” of those individuals named in a July 8, 1975, Stipulation adopted in pertinent part by the Final Judgment and Decree in Cause No. 9194. The Stipulation and Final Judgment and Decree are recorded at Book G-1, pages 796-887 of the Records of the Office of the County Clerk of Taos County. The Defendant represents that it is now the sole successor in interest to Randall as to License 215.

5. As a result of litigation between Randall and the South Ditch of the Rio Don Fernando de Taos (now known as the Acequia Madre del Sur del Canon) an agreement was entered into in Cause No. 902, First District Territorial Court, and recorded January 8, 1913 at Book M-19, page 87 of the Records of Agreements in the

Office of the County Clerk of Taos County, which allocated water from the Rio Fernando de Taos between Randall and the Acequia Madre del Sur del Canon ("Water Allocation Agreement"). The State was not a party in that action and is not a party to the Water Allocation Agreement. The Water Allocation Agreement was modified during the 1960s by mutual agreement and custom between the Defendant, as Randall's successor under License 215, and the Acequia Madre del Sur del Canon. A copy of the duly executed Water Allocation Agreement is attached hereto as *Exhibit 1*. The Water Allocation Agreement is an administrative agreement between the two Associations regarding the distribution of water supply and maintenance obligations. The Court makes no finding in this Consent Order as to the validity of the Water Allocation Agreement. Additionally, the Water Allocation Agreement does not amend or alter the Defendant's right to divert and store surplus water in the Randall Reservoir as defined in paragraph 8 below and adjudicated by this Consent Order, or the right to use storage water from the Randall Reservoir adjudicated under this Court.

6. As evidenced by their respective signatures below, the Defendant and the State agree that the rights granted under License 215 should be adjudicated and confirmed exclusively pursuant to the instant Consent Order. The signatories hereto are also in agreement regarding all elements of the Defendant's right to divert and store the public waters of the Rio Pueblo de Taos - Rio Hondo Stream System, as set forth in paragraph 8 of this Consent Order.

7. There is no just reason to delay entry of final judgment, as between the State and the Defendant regarding the elements of the claims of the Defendant adjudicated by this Consent Order.

8. The right of the Defendant to divert and use the public waters of the Rio Pueblo de Taos - Rio Hondo Stream System is as set forth below:

**STORAGE FOR IRRIGATION (Surface Water Only):**

<b>State Engineer File No.:</b>	215
<b>Priority:</b>	November 23, 1908.
<b>Source of Water:</b>	Surplus surface waters of the Rio Fernando de Taos, a tributary of the Rio Pueblo de Taos.
<b>Purpose of Use:</b>	Storage for Irrigation.
<b>Point of Diversion:</b>	The Randall Reservoir Ditch is a lateral of the Acequia Madre del Sur del Canon. Diversion out of the Rio Fernando de Taos for the Randall Reservoir Ditch is by means of the Acequia Madre del Sur del Canon. The Acequia Madre del Sur del Canon diverts out of the south bank of the Rio Fernando de Taos at X=706,260 and Y=1,956,750 on the New Mexico Coordinate System Central Zone, NAD 1927. The Randall Reservoir Ditch diverts out of the Acequia Madre del Sur del Canon at X=704,845 and Y=1,957,958, New Mexico Coordinate System Central Zone, NAD 1927.
<b>Location of Storage:</b>	As shown on the State Hydrographic Survey, Rio Pueblo de Taos Section, Map 20, Tract 12.
<b>Location of Irrigation:</b>	All tracts of land with surface water irrigation rights evidenced by a subfile order in this cause and served by the Randall Reservoir Ditch, and in accordance with the bylaws of the Randall Reservoir Acequia Association.
<b>Amount of Water:</b>	<p>The total amount of surplus water diverted from the Rio Fernando de Taos via the Acequia Madre del Sur del Canon and the Randall Reservoir Ditch <u>shall not exceed 528 acre-feet per annum</u>. Furthermore, the Randall Reservoir shall be filled with surplus water:</p> <ul style="list-style-type: none"> <li>- No more than five (5) times during the Spring;</li> <li>- No more than six (6) times during the Summer;</li> </ul>



- No more than two (2) times during the Fall; and
- No more than two (2) times during the Winter.

**Storage Parameters:**

Defendant shall strictly comply with each of the following Storage Parameters:

Storage Amount: The amount of water stored in the Randall Reservoir shall at no time exceed 35 acre-feet.

Surface Area of Impoundment: The surface area of the water impoundment in the Reservoir shall at no time exceed 3.5 acres.

9. The Defendant has no right to divert and use the public waters of the Rio Pueblo de Taos - Rio Hondo Stream System except as set forth in this Consent Order and other orders of the Court in this cause.

10. The Defendant, including the successors, representatives, heirs, and assigns of the Defendant, should be enjoined from any use of the public waters of the Rio Pueblo de Taos - Rio Hondo Stream System except in strict accordance with this Consent Order and other orders of the Court in this cause.

11. The water right described herein is adjudicated, as between the State and the Defendant, subject to the right of any other water right claimant with standing to object prior to entry of a final decree.

IT IS THEREFORE ORDERED that:

- a. The August 10, 1973, Order (No. 418.68) shall be and hereby is AMENDED to remove any reference to Pueblo Subfile 20.12.
- b. The water rights adjudicated under Pueblo Subfile 20.12 and granted under License 215 shall be and hereby are adjudicated exclusively pursuant to this Consent Order.

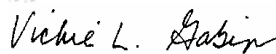
- c. Without accepting jurisdiction over the Water Allocation Agreement attached hereto as *Exhibit 1*, or disputes arising out of that agreement, the Court takes judicial notice of the Water Allocation Agreement for the limited purpose of acknowledging its existence as an administrative agreement between the two Associations regarding the distribution of water supply and maintenance obligations.

IT IS FURTHER ORDERED that the water rights of Defendant are hereby adjudicated, as between the State and the Defendant as set forth in paragraph 8 above; that the Defendant, including the successors, representatives, heirs, and assigns of the parties, are hereby enjoined from diverting or using public waters of the Rio Pueblo de Taos - Rio Hondo Stream System except in strict accordance with this Consent Order and other orders of the Court in this cause; and that the Court enters this Consent Order as a final judgment as to the matters adjudicated hereby, subject to the right of any other water right claimant with standing to object prior to entry of a final decree.



BRUCE D. BLACK  
UNITED STATES DISTRICT JUDGE

Approved:



VICKIE L. GABIN  
SPECIAL MASTER

APPROVED AND ACCEPTED BY:


DEFENDANT, RANDALL RESERVOIR ACEQUIA ASSOCIATION:

By:   
Name: President Hank Aragon  
Title:

Date: 5/19/09

By:   
Name: Glenn Polt  
Title: V.P.

Date: 5/19/09

By:   
Name: Anne Brenner  
Title: Sec/Treas

Date: 5/19/09

Fred J. Waltz, Esq., attorney for Defendant:

  
(Signature)

Date: May 26, 2009

STATE OF NEW MEXICO *ex rel.* STATE ENGINEER:

By:   
Special Assistant Attorney General

Date: June 1, 2009

### **AGREEMENT**

This Agreement is made and entered into on the date shown below by and between the Acequia Madre del Sur del Canon and the Randall Reservoir Acequia Association, through their lawfully authorized Commissioners in Taos County, New Mexico.

Whereas, the predecessors in interest of the two parties hereto have previously entered into an agreement which was recorded January 8, 1913 at Book M-19, page 87 of the Records of Agreements in the Office of the County Clerk of Taos County; and

Whereas the two parties hereto desire to amend the aforesaid agreement by the terms of this Agreement as herein contained; therefore:

In consideration of the mutual covenants herein contained, the aforesaid Acequia Associations do hereby agree that the water diverted from the Rio Fernando de Taos through the Acequia Madre del Sur del Canon is allocated as follows:

1. When the flow is over two (2) irrigating heads (as determined by a representative from each association), the water shall be divided sixty percent (60%) to the Acequia Madre del Sur del Canon and forty percent (40%) to Randall Reservoir Acequia Association.
2. When the flow is less than two (2) irrigation heads (as determined by a representative from each association), the Acequia Madre del Sur del Canon shall receive all of the water from six (6) am to six (6) pm daily and the Randall Reservoir Acequia Association shall receive all of the water from six (6) pm to six (6) am daily.

**EXHIBIT "1"**



3. That Randall Reservoir Acequia Association shall pay forty percent (40%) and the Acequia Madre del Sur del Canon shall pay sixty percent (60%) of the cost of ditch maintenance from the Rio Fernando de Taos to the dividing box belonging to both Associations.

RANDALL RESERVOIR ACEQUIA ASSOCIATION:

By: H. Allen Adams Date: 5/19/09  
Name: H. Allen Adams  
Title: President

By: Allen Pelt Date: 5/19/09  
Name: Allen Pelt  
Title: VP

By: Anne Breaner Date: 5/19/09  
Name: Anne Breaner  
Title: Sec/Treas

ACEQUIA MADRE DEL SUR DEL CANON:

By: Charles G. Hagan Date: 5/20/09  
Name: Charles G. Hagan  
Title: President

By: José C. Fernandez Date: 5/19/09  
Name: José C. Fernandez  
Title: Ditch Commissioner

By: James M. Wenzel Date: 5/19/09  
Name: James M. Wenzel  
Title: Secy.